

UTAH SCHOOL LAW UPDATE

Volunteer Corps

Utah public schools could not teach and serve students adequately without helpful school volunteers. But this army (often self-appointed) of volunteers presents issues that school districts and charter schools must address. To name a few: who has legal responsibility for a volunteer's actions? Who is responsible for training volunteers? What about student confidentiality when parent volunteers also live in the school neighborhood? Do parents have a RIGHT to volunteer? What happens if parent volunteers are disruptive or disrespectful to teachers?

Now for the answers: the school/school district is legally responsible for volunteers who are acting in the scope of their assignment in the same way a school is responsible for its employees. Similarly, Utah law protects volunteers from accidents or mishaps through both insurance and workers' compensation. Schools, specifically teachers, are re-

sponsible to train volunteers. Teachers should establish expectations; they can set schedules for volunteers in the classrooms and they should supervise volunteers appropriately, even closely. Volunteers may be required to have fingerprint background checks, as if they were employees. An individual may be found ineligible to volunteer. A 2008 New York court case determined that a volunteer (in this case, a volunteer coach) had no right to due process when he was uninvited to volunteer; there is no entitlement to a "role" as a volunteer. Another New York court case (Koran I. v New York City Bd. of Educ.) found that "Organizations are required only to do what a reasonably prudent person would do to review a volunteer's suitability."

Under the federal Family Education Rights and Privacy Act (FERPA), school volunteers with "legitimate educational interest" may view certain [student] educational records." Teachers should carefully and thoughtfully

consider volunteer access to student records. For instance, it may be appropriate for a parent volunteer to record student scores on short quizzes, but inappropriate for a volunteer to see special education records, review student discipline files or have access to complete student files.

An educational institution clearly may bar parents from school premises during the school day and school-related activities. or whenever the presence of the parents would be disruptive. Courts don't favor injunctions against parent/volunteers, but are clear that educators have the greatest responsibility for the safety and learning of all children in a school setting. Schools should be even-handed in their actions toward even difficult volunteers. A written policy at either the school or classroom level is very helpful. Courts expect school officials to have thick skins and not retaliate against students for the (unfortunate!) actions of their parents or grandparents.

Utah State Office of Education

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UPPAC CASES

The Utah State Board of Education accepted a stipulated agreement for suspension of Jack Charles Putnam's educator license. The suspension results from Mr. Putnam forging his administrator's signature on licensing renewal forms and failing to maintain documentation of professional development.

The State Board revoked Amy Elizabeth Carroll's license. The revocation results from Carroll selling school property for personal gain, pleading no content to theft, entering into a plea in abeyance for felony possession and use of a controlled substance and pleading guilty to class B misdemeanor retail theft.

Eye on Legislation

As the 2011 Legislative Session begins, it is useful to know which legislators serve as gatekeepers on bills related to public education.

While all bills must first pass through the powerful Rules Committee, typically those that affect public education directly are referred to the Education Committees in the House and Senate.

When a bill is assigned to an Education Committee, the members will hear from the bill sponsor and have the opportunity to ask questions. The sponsor may bring in others to speak on behalf of the bill as well. If the committee chooses, it may also hear from the public.

If a Representative is sponsoring the bill, it will be heard in the House Education Committee. This committee is chaired by dairy farmer Rep. Bill Wright, R-Holden. Rep. Wright is running a bill related to school community councils. The vice chair is attorney Rep. LaVar Christensen, R-Draper. He has no bills in process.

The other Republican members of the committee are homemaker and former therapist Rebecca Edwards from North Salt Lake, accountant Steve Eliason from Sandy, veterinarian John Mathis from Vernal, and attorney and retired judge Kay McIff from Richfield. None of these representatives is running K-12 education bills. Property manager Greg Hughes from Draper and consultant Merlynn Newbold from South Jordan are running charter school -related bills. Attorney Kraig Powell from Heber City has bills in process on guardianship and parental waivers of liability and accountant Ken Sumsion from American Fork is looking at the finances of divided school districts.

Democratic representatives on the committee are retired educator

Carol Spackman Moss from Holladay, who is looking at the State Board election process, educator Marie Poulson from Salt Lake City, and attorney Patrice Arent representing Salt Lake City.

The Senate Education Committee is chaired by Taxpayer Association President Howard Stephenson, R-Draper. He has 16 education bills ranging from partisan elections for the State Board to curriculum decisions. Republican committee members include attorney Lyle Hillyard from Logan, accountant Wayne Niederhauser from Sandy, business owner Jerry Stevenson from Layton, and wiring contractor Daniel Thatcher from West Valley City. None is currently pursuing education legislation.

The lone Democratic member is former teacher Sen. Karen Morgan from Salt Lake City. She has two bills pending related to the K-3 reading program.

UPPAC Case of the Month

Over the course of the last few years, an increasing number of public schools have installed security cameras on school property. Many include cameras to monitor the parking lot or outdoor areas as well as hallways and common areas within the school building.

These cameras are invaluable at times in Utah Professional Practices Advisory Commission investigations. Strangely enough, educators forget the cameras exist, and may make misleading statements not realizing that a camera, or series of cameras, has captured the event in question.

That is the case in several recent investigations. Three different educators in three different school districts were caught in the act of violating the Educator Standards Rule. In each, case, the educators provided explanations that defy the clear images captured by the cam-

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In one case, the educator confronted a student, using excessive force under the circumstances. The educator provided three differ-

ent explanations for the event, none of which was supported by the taped evidence. The educator's story was further undermined by eyewitness accounts which were cor-

roborated by the video.

In a separate case, the educator claimed a violent attack by an outsider. The educator used this attack to explain why she was later seen on the camera removing school property with the alleged attacker. The cameras showed no attack anywhere on school property.

The final case involved an educator with a history of manhandling students grabbing a student and forcing him down a flight of stairs. The student fell in the process, in-

juring his elbow. The educator claimed he did not "force" the student, but was merely "helping the student" and holding on to ensure he did not run away. The video image, including the expressions on the student's and educator's faces, told a very

different story.

Cameras won't solve all issues, but the evidence provided may make a huge difference when the Commission is deliberating the appropriate licensing action under the circumstances.

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Recent Education Cases

Griswold v. Driscoll (1st Cir., 2010, cert. denied 2011). The U.S. Supreme Court refused to hear an appeal from a First Circuit Court of Appeals' case regarding politically motivated censorship of school curriculum materials.

In 1998, the Massachusetts legislature enacted a law requiring the State Board to "formulate recommendations on curricular material on genocide and human rights issues and guidelines for the teaching of such material." The Board was also charged with providing a non-exhaustive list of topics for consideration, including the Armenian genocide. The guide would be made available to districts, but districts would not be mandated to follow the guide.

In January, 1999, the Massachusetts Commissioner of Elementary and Secondary Education (akin to the Utah Superintendent of Public Instruction) issued a draft guide for the Board's review. The guide specifically referred to the Armenian genocide, as required by the statute. A Turkish cultural group asked the Commissioner and Board to revise the guide to include a "contragenocide perspective."

The Commissioner and board removed background information which stated that "the Muslim Turkish Ottoman Empire destroyed large portions of its Christian Armenian minority population." The Commissioner also added citations to several sources which supported the Turkish viewpoint.

Armenian descendents then asked the governor to remove the references to pro-Turkish sources.

The Board again obliged, removing all Turkish sources, except for the Turkish Embassy. The Turkish groups then returned to plead their case. The Commissioner responded that the legislation specifically required mention of the Armenian genocide but did not require a discussion of whether it occurred.

The final version of the guide included cites to sources such as the United Nations, Amnesty International and several Armenian groups. No Turkish organizations were listed.

Students, parents, and the Assembly of Turkish American Associations filed suit, claiming violation of their First Amendment rights. The students argued the revisions violated their right to

learn free from viewpoint discrimination. The Associations argued the removal of their website from the guide restricted their speech.

The plaintiffs likened the Board's actions to removing books from a school library—something the U.S. Supreme Court ruled violated the First Amendment where the decision is based on political or religious objections from Board members.

The defendant Commissioner argued the guide is purely curricular, an issue within the Board's jurisdiction. The U.S. Supreme Court has also ruled that a school board cannot be forced to speak by requiring it to adopt any particular viewpoint.

The First Circuit found the guide to be an element of curriculum, not akin to a public library. Thus, the Board's decision to revise the guide based on political pressure did not violate the First Amendment. Curriculum decisions belong to the Board and it can choose the viewpoint it wishes when speaking upon a matter fully within its area of expertise and authority.

Your Questions

Q: I received a letter from the Utah Professional Practices Advisory Commission. It asks me for information from an arrest that happened decades ago. How can I most efficiently resolve this unpleasant situation?

A: First, read the letter carefully. It will tell you exactly what information you need to provide. The letter will ask for police or court records related to the arrest. For a decades-old arrest, or series of arrests, police records may no

What do you do when...?

longer be available. The most efficient way to handle this is to ask the arresting police department for a letter stating that the records are not available.

The same may also be true of court records. Contact the court that was involved in the case. If the court no longer has the records of the matter, ask for a letter stating that is the case.

Finally, make sure you provide the required explanation of the arrest. Your explanation should be an honest accounting of the events. The Commission will take into account the age of the arrest and if it is a misdemeanor. Single arrests from decades ago are not typically a bar to licensing, unless the arrests involve felonies or crimes against children.

Q: We are being told by some districts that they will only send

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

(Continued from page 3)

a student's transcript when we request student records for enrollment. Is that all that a school is required to send?

A: The federal FERPA law defines education records as anything a school maintains about an individual student. State law does not define student record, but we have applied the federal definition to say districts and charter schools should send copies of everything in order for the new school to best serve the student. Also, under FERPA, there is no reason for a school to deny the records to another school, including discipline records.

If the districts are refusing to transfer complete records under state law, I would recommend requesting the records under FERPA and citing the statute, which is 42 U.S.C. 1232g. You should also cite the exceptions to FERPA which allow the transfer of records to a school where the student seeks or intends to enroll,

42 U.S.C. 1232g(b)(1) (B). A school need not include discipline records which are maintained by a law en-

forcement unit FOR LAW EN-FORCEMENT PURPOSES. Most student discipline records will not be used for law enforcement purposes.

If a district has a designated law enforcement unit where all discipline records are kept, it may require a subpoena before those records are released. However, if the district knows of a safe schools violation and has taken schoolbased action against the student, that action should be part of the students school records and

should be provided to the transfer school.

Finally, it is a disservice to kids for any school not to provide a complete record upon transfer. Our interest as an education system should be to ensure that all

kids receive appropriate educational services. No school or district should adopt a policy of hiding records for reasons unrelated to the best interests of the students.